

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Anna Steel	Team: Team # 4	CCRB Case #: 200918657	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 11/28/2009 11:30 PM	Location of Incident: § 87(2)(b) and § 87(2)(b)	Precinct: 79	18 Mo. SOL 5/28/2011	EO SOL 5/28/2011	
Date/Time CV Reported Sat, 12/05/2009 10:53 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 12/05/2009 10:53 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christophe Dede	07347	938337	079 PCT
2. SGT William Glynn	00034	932718	079 PCT
3. POM Danny Hernandez	10770	936751	079 PCT
4. POM Charne Jimenez	00425	940304	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christophe Dede	Abuse: PO Christophe Dede stopped § 87(2)(b)	
B.POM Christophe Dede	Abuse: PO Christophe Dede frisked § 87(2)(b)	
C.POM Christophe Dede	Abuse: PO Christophe Dede refused to provide his name and shield number to § 87(2)(b)	
D.SGT William Glynn	Abuse: Sgt. William Glynn refused to provide his name and shield number to § 87(2)(b)	
E.POM Charne Jimenez	Abuse: PO Charne Jimenez refused to provide his name and shield number to § 87(2)(b)	
F.POM Danny Hernandez	Abuse: PO Danny Hernandez refused to provide his name and shield number to § 87(2)(b)	

## Case Summary

§ 87(2)(b) filed a complaint with the CCRB on December 15, 2010 (encl. 4a – 4b).

On November 28, 2009, at about 11:45 p.m., § 87(2)(b) was approached by Sgt. William Glynn, PO Christopher Dede, PO Charne Jimenez, and PO Danny Hernandez of the 79<sup>th</sup> Precinct. The following allegations resulted:

- **Allegation A – Abuse of Authority: PO Christopher Dede stopped** § 87(2)(b)
- **Allegation B – Abuse of Authority: PO Christopher Dede frisked** § 87(2)(b) § 87(2)(g)  
§ 87(2)(b)
- **Allegation C – Abuse of Authority: PO Christopher Dede refused to provide his name and shield number to** § 87(2)(b)
- **Allegation D – Abuse of Authority: Sgt. William Glynn refused to provide his name and shield number to** § 87(2)(b)
- **Allegation E – Abuse of Authority: PO Charne Jimenez refused to provide his name and shield number to** § 87(2)(b)
- **Allegation F – Abuse of Authority: PO Danny Hernandez refused to provide his name and shield number to** § 87(2)(b) § 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)

This case was originally assigned to Investigator Hesel. Pending her resignation from the agency, the case was reassigned to Investigator Steel on June 29, 2010.

## Results of Investigation

### Civilian Statement(s)

#### Complainant/victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b) black male who is 5’6” tall, weighs 125 pounds, and has brown hair and brown eyes.

§ 87(2)(b) was interviewed at the CCRB on January 4, 2010 (encl. 6a – 6f). On November 28, 2009, at about 11:45 p.m., § 87(2)(b) left his residence, § 87(2)(b) in Brooklyn, to go to a bus stop. It was cold so he began running on § 87(2)(b). He heard a voice shout, “Stop!” He turned and saw four officers, identified through the investigation as Sgt. William Glynn, PO Christopher Dede, PO Charne Jimenez, and PO Danny Hernandez of the 79<sup>th</sup> Precinct, approaching him. PO Dede grabbed his right hand. § 87(2)(b) pulled away. PO Dede told him to stop ‘tensing’ and § 87(2)(b) said that he would comply when the officers stopped holding him. PO Dede asked § 87(2)(b) why he was running. § 87(2)(b) replied that he could run if wished. PO Dede explained that he should not be running because there had been a robbery in the area. PO Jimenez asked § 87(2)(b) if he had any weapons or drugs on him. § 87(2)(b) alleged that PO Jimenez frisked him on his torso, arms and legs. The investigation determined that it was PO Dede who conducted this frisk. During the frisk, § 87(2)(b) loudly requested all of the officers’ names and shield numbers. PO Dede asked for his ID, to which § 87(2)(b) responded, “Let me see yours first.” PO Dede explained that since § 87(2)(b) did not have his ID, they would have to take his picture. PO Dede took a digital camera out of his pocket and photographed § 87(2)(b)’s face. § 87(2)(b) took out his mobile phone with the intention of taking the officers’ photos, but two of the officers directed the

beam of their flashlights at him such that the light obscured their faces when photographed. § 87(2)(b) presented the investigator with a photo from the camera on his cell phone which showed one bright light and one less intense light with two individuals standing behind the lights and another individual, possible a white male, standing to the left. The officers never provided their names or shield numbers to § 87(2)(b). At the conclusion of the incident, the officers walked across § 87(2)(b) and entered the nearby 79<sup>th</sup> Precinct stationhouse. § 87(2)(b) proceeded to the bus stop.

#### **NYPD Statement(s):**

##### **Subject Officer: PO CHRISTOPHER DEDE**

- *PO Dede is a § 87(2)(b)-old white male who is 5'10" tall, weighs 190, and has brown hair.*
- *On the day of the incident, he was assigned to anti-crime and worked 7:30 p.m. to 4:05 a.m. with Sgt. Glynn, PO Jimenez and, PO Hernandez, in plainclothes and an unmarked vehicle.*

#### **CCRB Testimony**

PO Dede was interviewed at the CCRB on June 3, 2010 (encl. 9a – 9c). On November 28, 2010, at about 11:40 p.m., PO Dede saw a male, identified through the investigation as § 87(2)(b) on § 87(2)(b) and § 87(2)(b). § 87(2)(b) appeared to be following another male. PO Dede and his partners were addressing a robbery condition, though PO Dede did not recall any of the details of this condition, and PO Dede thought § 87(2)(b) was casing a potential victim. No additional factors led PO Dede to suspect that § 87(2)(b) was casing a victim. § 87(2)(b) reached his hand towards the front of his waistband. PO Dede saw a bulge in his waistband, though he could not recall its size, shape or location. PO Dede suspected the bulge was a weapon. PO Dede decided to stop § 87(2)(b) because he appeared to be casing a victim and because of the bulge in his waist. PO Dede did not recall how he initiated the stop. Once approached, § 87(2)(b) became verbally combative. PO Dede did not recall what he said exactly, other than objecting to the stop. § 87(2)(b) was never physically aggressive during the incident. PO Dede tried to explain why he had stopped § 87(2)(b) but § 87(2)(b) would only cut him off and rebut his explanations. PO Dede requested § 87(2)(b)'s ID, which he refused to provide. § 87(2)(b)'s aggressive behavior, in addition to the bulge in his waistband, led PO Dede to fear he might be hiding something like a weapon. PO Dede frisked § 87(2)(b) but did not feel anything indicative of a weapon. § 87(2)(b) 'squirmed' and tried to move away during the frisk. § 87(2)(b) then requested PO Dede's name and shield number, which PO Dede provided to him. § 87(2)(b) also requested Sgt. Glynn, PO Jimenez, and PO Hernandez's name and shield numbers. At the end of the incident, § 87(2)(b) took a photograph of PO Dede with his mobile phone. PO Dede and his partners then resumed patrol.

§ 87(2)(g)

##### **Subject Officers: SGT. WILLIAM GLYNN, PO CHARNE JIMENEZ, PO DANNY HERNANDEZ**

- *Sgt. Glynn is a § 87(2)(b)-old white male who is 6'1" tall, weighs 220, and has brown hair.*
- *PO Jimenez is a § 87(2)(b)-old Hispanic male who is 5'5", weighs 250, and has brown hair.*
- *PO Hernandez is a § 87(2)(b)-old Hispanic male who is 5'8", weighs 200, and has brown hair.*
- *On the day of the incident, the above officers held the same assignment as PO Dede.*

#### **CCRB Testimony**

Sgt. Glynn was interviewed at the CCRB on June 18, 2010 (encl. 15a – 15b). PO Jimenez and PO Hernandez were interviewed at the CCRB on June 8, 2010 (encl. 13a – 13b; encl. 11a – 11b). Sgt. Glynn, PO Jimenez, and PO Hernandez did not have an independent recollection of the incident. Sgt. Glynn and PO Hernandez knew that there had been a spike in robberies around the time of the incident near § 87(2)(b) and § 87(2)(b). PO Jimenez explained that the robberies were committed by a group of teenagers who were stealing mobile phones out of their victim's hands. In some of the robberies, a firearm had been reported. Sgt. Glynn, PO Jimenez, and PO Hernandez never refused to provide their names or shield numbers to anyone.

### **NYPD Document(s)**

#### **Stop, Question and Frisk Report**

- According to a stop, question and frisk report (encl. 8a – 8b), § 87(2)(b) whose name was listed as 'refused,' was suspected of robbery due to actions indicative of casing a victim, furtive movements, and a suspicious bulge in his waist. Other factors were a high incidence of the reported offense, time of day corresponding to criminal activity, evasive false or inconsistent responses, and changing directions at the sight of officer. § 87(2)(b) was frisked due to his refusal to comply with officers' directions, a violent suspected crime, and furtive movements. He was reportedly very aggressive, noncompliant, and would not let the officers speak.

#### **Status of Civil Proceedings**

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of May 25, 2010, with regard to the incident (encl. 17).

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

#### **Civilian(s) CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b)

#### **Subject Officer(s) CCRB History**

- PO Dede and PO Jimenez have been members of the service for four years, PO Hernandez has been a member of the service for five years, and there are no substantiated CCRB allegations against them (encl. 3a – 3e).
- Sgt. Glynn has been a member of the service for seven years and there are two substantiated CCRB allegations against him (encl. 3b – 3c): In CCRB case 200605789, a strip-search allegation was substantiated against him and command discipline was imposed. In CCRB case 200712972, a frisk allegation was substantiated against him and command discipline was recommended.

### **Conclusion**

#### **Identification of Subject Officer(s)**

- PO Christopher Dede acknowledged interacting with § 87(2)(b)
- Sgt. Glynn, PO Jimenez, and PO Hernandez confirmed that they were working with PO Dede on the day of the incident.

#### **Investigative Findings and Recommendations**

**Allegation A – Abuse of Authority: PO Christopher Dede stopped § 87(2)(b)**

It is undisputed that PO Dede stopped § 87(2)(b). According to PO Dede, he saw § 87(2)(b) following someone. Because the officers were investigating a robbery pattern, § 87(2)(b)'s behavior led PO Dede to suspect he was casing a victim. § 87(2)(b) also reached towards an unidentified bulge in his waistband, and PO Dede decided to stop him on the basis of both these factors. As set forth in People v. De Bour, 386 N.Y.S.2d 375 (1976), a police officer may forcibly stop an individual when he has reasonable suspicion that the person is committing, has committed or is about to commit a crime (encl. 2f – 2q). PO Dede's observations did not satisfy this requirement. In People v. Howard, 430 N.Y.S.2d 578 (1980), in which officers stopped a male carrying a vanity case after he changed his directions and quickened his pace in an area plagued by numerous burglaries, the Court determined that the officers were justified only in requesting information from the defendant, not stopping him, as these factors did not constitute reason to believe that the male had committed or was engaged in committing a crime (encl. 2a – 2c). PO Dede did not recall the specifics of the robbery pattern which led him to suspect that § 87(2)(b) was casing a victim. PO Jimenez said the robberies they were investigating were committed by a group of teenagers who were stealing cell phones out of their victims' hands. § 87(2)(g)

While PO Dede claimed to have observed a bulge in § 87(2)(b)'s waistband, he could not describe the size, shape or specific location of this bulge. As noted in Kamins, New York Search & Seizure, 'there are a number of inherently innocuous objects' which could cause a bulge in the waistband area (encl. 1a – 1d). In People v. Harris, 540 N.Y.S. 2d 514 (1989), officer stopped a male with an unidentified bulge in his waistband after he fled upon their approach (encl. 2d – 2e). The Court concluded that the stop was unlawful and these findings make clear that the presence of an unidentified bulge alone will not give rise to reasonable suspicions. § 87(2)(g)

#### **Allegation B – Abuse of Authority: PO Christopher Dede frisked § 87(2)(b)**

PO Dede acknowledged frisking § 87(2)(b). PO Dede stated that § 87(2)(b)'s behavior and the bulge in his waistband led him to suspect that he was hiding weapon. According to Kamins, New York Search & Seizure, a frisk may be conducted when an officer has reasonable suspicion that the subject is engaged in a crime and an independent reason to believe that the subject is armed and dangerous (encl. 1a – 1d). § 87(2)(g)

As noted in People v. Harris, 540 N.Y.S. 2d 514 (1989), the observation of a bulge will constitute reasonable suspicion only if the sight of the bulge is accompanied by some other indicia of criminal activity or menacing behavior (encl. 2e – 2d). PO Dede cited § 87(2)(b)'s verbal combativeness, which PO Dede described as 'aggressive behavior,' as justification for the frisk. PO Dede could not recall anything § 87(2)(b) said specifically, aside from objecting to the stop. As noted in People v. Howard, "an individual to whom a police officer addresses a question has a constitutional right not to respond and may remain silent or walk or run away" (encl. 2a – 2c). § 87(2)(g)

